

K8A8CLAP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 76 (NRB)

5 ZACHARY CLARK,

6 Defendant.

Teleconference

7 -----x

8 New York, N.Y.
9 August 10, 2020
12:05 p.m.

10 Before:

11 HON. NAOMI REICE BUCHWALD,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 Acting United States Attorney for the
Southern District of New York

16 MATTHEW HELLMAN

GILLIAN GROSSMAN

17 Assistant United States Attorneys

18 FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant

19 JONATHAN MARVINNY

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(The Court and all parties appearing telephonically)

THE COURT: Good morning. This is Judge Buchwald speaking. Could I take attendance on this call, which is in United States v. Zachary Clark, 20 Cr. 76.

I can account easily for two people on the call, myself and my law clerk.

Is there a court reporter on?

REPORTER: Yes, Judge. Good morning. It's Eve Giniger.

THE COURT: Good morning, Eve.

Is Mr. Clark on the phone?

THE DEFENDANT: Yes. Good morning, Judge. This is Mr. Clark, Zachary Clark.

THE COURT: Who is on the phone for the government?

MR. HELLMAN: Good afternoon, your Honor. This is Matthew Hellman for the United States. Gillian Grossman is also on the line.

THE COURT: Who is on the phone for Mr. Clark?

MR. MARVINNY: Good afternoon, your Honor. Federal Defenders of New York. This is Jonathan Marvinny for Mr. Clark.

THE COURT: There are two participants unaccounted for. Do any of you have interns on the phone?

MR. HELLMAN: No, your Honor.

MR. MARVINNY: Your Honor, again, I believe Mr.

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1 Clark's partner, Randy Jimenez, is on the call.

2 THE COURT: OK. I think I am still one short.

3 MS. WILLIAMSON: Good afternoon, your Honor. This is
4 FBI Special Agent Marcia Williamson. And I am joined with FBI
5 Special Agent Courtney Bongiolatti, Special Agent Raymond
6 Esposito, NYPD Detective Constantine Papadopoulos, and FBI
7 Intern Samantha Bloecker.

8 THE COURT: As I understand it, the purpose of this
9 proceeding today is for Mr. Clark to enter a plea of guilty.

10 So let's begin.

11 Mr. Clark, would you state your full name for record?

12 THE DEFENDANT: Zachary James Clark.

13 THE COURT: How old are you, Mr. Clark?

14 THE DEFENDANT: 42.

15 THE COURT: 42?

16 THE DEFENDANT: Yes.

17 THE COURT: What was the highest grade in school that
18 you completed?

19 THE DEFENDANT: I have a GED. Probably ninth grade.

20 THE COURT: Are you now or have you recently been
21 under the care of a doctor or a mental health professional?

22 THE DEFENDANT: I am currently under the care of a
23 health doctor.

24 THE COURT: Is there a diagnosis that they are
25 treating you for?

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1 THE DEFENDANT: Yeah. I have generalized anxiety
2 disorder and borderline personality disorder, bipolar.

3 THE COURT: If at any point you have any difficulty or
4 questions about what I am saying to you, will you let me know,
5 please?

6 THE DEFENDANT: Yes. Absolutely, Judge.

7 THE COURT: Have you ever been hospitalized or treated
8 for alcoholism or narcotics addiction?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: When was that?

11 THE DEFENDANT: Multiple times, from the ages of, say,
12 17 up until 40, 41.

13 THE COURT: 31 or 41?

14 THE DEFENDANT: 41. And my lawyer has, I believe, a
15 printout of all of the facilities and treatments I have been in
16 throughout the years.

17 THE COURT: Are you under the influence of any drug or
18 alcohol today?

19 THE DEFENDANT: No.

20 THE COURT: How are you feeling physically today?

21 THE DEFENDANT: OK.

22 THE COURT: OK?

23 THE DEFENDANT: Yeah.

24 THE COURT: All right. So did you authorize your
25 lawyer to sign on your behalf a waiver of your right to be

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1 present at a criminal proceeding?

2 THE DEFENDANT: Yes.

3 THE COURT: Before you authorized Mr. Marvinny to sign
4 that on your behalf, did you discuss with Mr. Marvinny your
5 right to physically appear in a courtroom before me to enter a
6 plea?

7 THE DEFENDANT: Yes.

8 THE COURT: I assume that Mr. Marvinny explained to
9 you that there are some challenges to in-person proceedings
10 given the COVID virus?

11 THE DEFENDANT: Yeah. I know it's slowing everything
12 down.

13 THE COURT: Is it your wish to give up your right to
14 appear in front of me in person?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Also, of course, in the courtroom, you
17 would have your attorney right next to you, but he can't be
18 right next to you now.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you waive that right to have him
22 physically really close by?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Of course, if there is something in the
25 course of this plea that requires you to talk to Mr. Marvinny

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1 in private, that can be arranged.

2 THE DEFENDANT: OK.

3 THE COURT: And you will let me know. OK?

4 THE DEFENDANT: Yes.

5 THE COURT: Thank you.

6 I assume that you received at some point a copy of the
7 indictment in the case, correct?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you had sufficient time to discuss
10 the charges in the indictment and your plea with Mr. Marvinny?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have you been satisfied with the advice
13 and counsel Mr. Marvinny has given to you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Are you ready to enter a plea at this
16 time?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: What is your plea to Count One of the
19 indictment, guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Mr. Clark, in order to determine whether
22 your plea is voluntary and made with a full understanding of
23 the charges against you and the consequences of your plea, I
24 will make certain statements to you and ask you certain
25 questions.

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1 THE DEFENDANT: OK.

2 THE COURT: I want you to understand that I need not
3 accept your plea unless I am satisfied that you are in fact
4 guilty and that you fully understand your rights. OK?

5 THE DEFENDANT: OK.

6 THE COURT: So Count One charges you with providing,
7 and attempting to provide, material support or resources to a
8 foreign terrorist organization, namely, ISIS. This crime
9 carries a maximum possible sentence of 20 years in prison, a
10 maximum term of supervised release of life, a maximum fine of
11 the greatest amount of \$250,000, basically, a possible fine of
12 \$250,000, and a \$100 mandatory special assessment.

13 Do you understand that that is the charge against you
14 and the maximum possible penalty under the law for that charge?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that in exchange for
17 your plea of guilty, that the government has agreed not to
18 prosecute you further --

19 THE DEFENDANT: Yes.

20 THE COURT: Let me just finish.

21 THE DEFENDANT: OK.

22 THE COURT: -- for providing, or attempting to
23 provide, material support to ISIS during the period of April
24 2019 up to and including November 2019, with the exception of
25 possible criminal tax violations?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you also understand that it is part of
3 your plea agreement to admit the forfeiture allegation in the
4 indictment with respect to Count One?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that you have the right
7 to plead not guilty and the right to a trial on the charges
8 against you and the right to a jury trial?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Do you understand that if you pled not
11 guilty and went to trial, that the burden would be on the
12 government to prove each and every element of the crime charged
13 beyond a reasonable doubt in order to convict you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that at a trial, you
16 would have the right to be represented by an attorney at all
17 stages of the proceeding and, if necessary, an attorney would
18 be appointed for you?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that at a trial, you
21 would have the right to confront and cross-examine witnesses
22 against you and the right not to be compelled to incriminate
23 yourself?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And do you understand that at a trial, you

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1 would be presumed innocent until such time, if ever, the
2 government established your guilt by competent evidence to the
3 satisfaction of the trier of fact beyond a reasonable doubt?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And do you understand that at a trial, you
6 would have the right to testify and would also be entitled to
7 compulsory process, in other words, the right to call other
8 witnesses on your behalf?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that if your plea is
11 accepted, there will be no further trial of any kind, so that
12 by pleading guilty you are waiving your right to a trial?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that if you are
15 sentenced to a period of supervised release and if you violate
16 the terms of your supervised release, that an additional period
17 of jail time may be imposed without credit for the time that
18 you had previously spent on supervised release?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that in connection with
21 your plea of guilty, that the Court may ask you certain
22 questions about the offense to which you have pled, and if you
23 answer those questions under oath, on the record, and in the
24 telephonic presence of counsel, that your answers, if false,
25 may later be used against you in a prosecution for perjury or

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1 false statement?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Clark, what country are you a citizen
4 of?

5 THE DEFENDANT: United States.

6 THE COURT: Now, have you received a copy of the plea
7 agreement in this case?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Did you have an opportunity to review the
10 plea agreement with Mr. Marvinny?

11 THE DEFENDANT: Yes, I did, your Honor.

12 THE COURT: Mr. Marvinny, I think I understand that
13 there is a request that the Court affix Mr. Clark's signature
14 to the plea agreement. Is that correct?

15 MR. MARVINNY: That's correct, your Honor.

16 THE COURT: Mr. Clark, after receiving the plea
17 agreement and reviewing it with Mr. Marvinny, do you agree to
18 it and authorize the Court to sign it on your behalf?

19 THE DEFENDANT: Yes, I do, your Honor.

20 THE COURT: All right. Mr. Clark, separate and apart
21 from the plea agreement itself, have any threats or promises
22 been made to you to make you plead guilty?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Again, separate and apart from the plea
25 agreement itself, have any understandings or promises been made

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1 to you concerning the sentence you will receive?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Is your plea voluntary, in other words, of
4 your own free will?

5 THE DEFENDANT: Yes, it is, your Honor.

6 THE COURT: So let me review some portions of the plea
7 agreement with you.

8 First, the plea agreement contains a stipulated
9 guidelines range of 240 months in prison.

10 Do you understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: There is also a stipulated fine range of
13 from \$40,000 to \$400,000.

14 Do you understand that?

15 THE DEFENDANT: Yes, I do, your Honor.

16 THE COURT: Do you understand that the parties have
17 agreed that neither an upward nor a downward departure from the
18 stipulated guidelines range is appropriate, but that either
19 party may seek a sentence outside of the stipulated guidelines
20 range?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that if there is
23 information that the government does not currently know, that
24 it has reserved the right to argue for another guidelines
25 range?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that neither the
3 probation office nor the Court is bound by the guideline
4 stipulation?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And that the sentence to be imposed upon
7 you is determined solely by the Court?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand that you have agreed
10 that if you receive a sentence within or below the stipulated
11 guidelines range of 240 months, that you will not file a direct
12 appeal or otherwise challenge your sentence?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Are you pleading guilty because you are in
15 fact guilty?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that this plea agreement
18 does not bind any prosecutor other than the U.S. Attorney's
19 Office for the Southern District of New York?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that apart from any
22 written proffer agreement that you may have entered into with
23 the U.S. Attorney's Office, that this agreement takes the place
24 of any prior understanding you may have had with the U.S.
25 Attorney's Office, and that this plea agreement cannot be

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1 modified except in a writing signed by all parties?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Clark, did you commit the offense that
4 you have been charged with in the indictment?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Could you tell me in your own words what
7 you did?

8 THE DEFENDANT: Sure.

9 I would say probably around 2019 or so, I knowingly
10 did provide, create, distribute propaganda on social media for
11 an organization at the time I knew had prior engagement to
12 terrorism. A majority of the stuff took place while I was in
13 the Bronx. And my conduct was wrong and illegal, so I take
14 accountability for that, ownership. I do apologize to the
15 people.

16 That about sums it up.

17 THE COURT: You said you were creating on social media
18 material for an organization that you knew had terrorist
19 connections, is that right?

20 THE DEFENDANT: Yes. That's right.

21 THE COURT: And, specifically, were you aware that it
22 had connections with ISIS?

23 THE DEFENDANT: Yes, I was.

24 THE COURT: Mr. Hellman, are there any other questions
25 that you want me to ask Mr. Clark?

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1 MR. HELLMAN: Your Honor, specifically, is the Court
2 asking if there are additional questions for Mr. Clark with
3 respect to the offense conduct?

4 THE COURT: Exactly. Because that's something that
5 you know more about than I do.

6 In other words, is his allocution sufficient in terms
7 of the offense? That's my question. Is there something else
8 you would like me to ask him?

9 MR. HELLMAN: I believe the allocution is sufficient
10 as far as the offense conduct is concerned. Thank you, your
11 Honor.

12 THE COURT: Do you think the allocution is defective
13 in some other way?

14 MR. HELLMAN: No, your Honor.

15 THE COURT: Just curious.

16 Mr. Clark, do you still wish to plead guilty?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And, Mr. Marvinny, do you know of any
19 reason why Mr. Clark ought not to plead guilty?

20 MR. MARVINNY: No, I don't, your Honor.

21 THE COURT: Mr. Clark, I am satisfied that you
22 understand the nature of the charge against you and the
23 consequences of your plea, and that your plea is made
24 voluntarily and knowingly, and that there is a factual basis
25 for it. Accordingly, I will accept your plea of guilty and

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1 direct that a presentence report be prepared.

2 From my own calculations, the presentence report
3 should be ready by November 2nd, but I was going to ask the
4 parties for guidance as to the submission of sentencing
5 submissions. Given the nature of the case, I thought possibly
6 it might take a little longer, but as I say, I am happy to
7 receive your suggestions.

8 MR. MARVINNY: Yes. I appreciate that invitation from
9 the Court. I was going to ask the Court for at least six
10 months for sentencing for the reasons you have already
11 identified. We are collecting various documents and records on
12 Mr. Clark, and we are obviously going to be putting together a
13 very substantial submission. So I think six months would be,
14 especially given the current conditions, six months would
15 probably be the minimum time that I would ask for.

16 THE COURT: Of course, with the understanding that he
17 stays -- where is he, by the way?

18 MR. MARVINNY: He is at the MCC.

19 THE COURT: That means he stays at the MCC.

20 MR. MARVINNY: I understand that, your Honor.

21 THE COURT: And he understands that that's, in a
22 sense, the possible trade-off?

23 MR. MARVINNY: Yes, I believe Mr. Clark understands
24 that.

25 THE COURT: I assume the government has no objection

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1 to a somewhat delayed sentencing.

2 MR. HELLMAN: That's correct, your Honor. The
3 government previously discussed that with defense counsel and
4 understands that the sentencing may be somewhat delayed.

5 Separately, I will just ask, after addressing this
6 portion of the proceeding, the government would ask for a brief
7 opportunity to make a record.

8 THE COURT: OK. Why don't you go ahead and do that.
9 We can always get back to scheduling.

10 MR. HELLMAN: Thank you, your Honor.

11 I think my cue might have been a little earlier, but I
12 apologize for that.

13 The government would like an opportunity at this point
14 to briefly summarize the evidence, what it expects it will show
15 at trial, just quickly summarize the elements of the offense.

16 THE COURT: You know, you're right. I missed the
17 question. I apologize. I went right past that part of my
18 script. I apologize for that. Totally my fault.

19 MR. HELLMAN: Of course. Not a problem at all.

20 THE COURT: Judges can do no wrong. I understand
21 that.

22 MR. HELLMAN: Very good, your Honor.

23 With respect to the elements, which I think makes
24 sense to address first, the elements that the government is
25 required to prove beyond a reasonable doubt with respect to

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Count One are as follows:

First, that the defendant attempted to provide material support or resources, which includes training, services and personnel, among other qualifying categories, to a foreign terrorist organization, here, ISIS. The government, to be clear, would prove that the defendant attempted and did provide material support and resources to ISIS;

Second, that the defendant acted intentionally and knowingly, in that he knew either that the organization was designated as a foreign terrorist organization or that the organization engaged in terrorist activity or terrorism; and

Third, that at least one of the jurisdictional requirements set forth in subsection (d) of Section 2339B is satisfied. Such requirements include that either the defendant is a national of the United States or that the offense occurred, in whole or in part, within the United States.

The government would also need to establish by a preponderance of the evidence that venue was proper in the Southern District of New York.

If your Honor will allow, I can proceed to a proffer as far as the government's proof as to each of those elements.

THE COURT: You may proceed. I think I should ask the question I would normally ask at this point of Mr. Clark.

Mr. Clark, do you understand that in order to convict you, the government would have to prove beyond a reasonable

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1 doubt each and every element of the crime that the government
2 has just outlined?

3 THE DEFENDANT: Yes, I do, your Honor.

4 THE COURT: Mr. Hellman, you may proceed.

5 MR. HELLMAN: Thank you, your Honor.

6 If this case were to proceed to trial, the
7 government's evidence would include the following:

8 First, testimony of law enforcement officers and other
9 witnesses;

10 Second, the government would introduce in evidence
11 electronic communications, including communications over an
12 encrypted application. Those communications include, among
13 others, communications between the defendant and multiple
14 undercover FBI employees and confidential sources; the
15 defendant's publicly accessible posts in over a dozen pro-ISIS
16 chat rooms, which include the following examples, among
17 numerous others: Graphics encouraging violent attacks on
18 tourist attractions, crowds, public transportation, such as the
19 subway, and members of law enforcement in New York City; a
20 three-part video on making a suicide bomb; a manual on
21 conducting random lone-wolf-style attacks, such as firing a
22 weapon and brandish through crowds, driving trucks through
23 crowds, developing chemical weapons, and methods on evading law
24 enforcement detection; a manual on conducting knife attacks
25 with lethal methods to use; more than 100 manuals available for

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1 download addressing, among other things, cyanide poisoning of
2 food supplies, explosives, firearms, chemical weapons,
3 biological weapons, suicide belts, homemade bombs, and other
4 weapons of jihad.

5 The government would also introduce evidence obtained
6 pursuant to searches of the defendant's electronic devices;
7 evidence obtained pursuant to searches of the defendant's
8 social media e-mail accounts, including, for example, a video
9 in which the defendant pledged bayat, or allegiance, to ISIS's
10 leader; physical evidence including evidence seized from the
11 defendant's Brooklyn residence at the time of his arrest
12 pursuant to search warrants, including dozens of books, such as
13 volumes on ISIS terrorism around the world, warfare tactics,
14 jihad and Osama bin Laden, a handmade ISIS flag, a drawing of
15 the ISIS flag, and a stencil containing the emblem of ISIS.

16 The government would also introduce a video recording
17 of the defendant's post-arrest admissions and law enforcement
18 testimony regarding physical surveillance of the defendant
19 which places him in the Bronx during certain portions of the
20 offense conduct, as well as cell phone GPS data showing that
21 the defendant committed portions of the offense conduct in the
22 Bronx, in New York.

23 The government submits all of this evidence would
24 prove that the defendant joined, or attempted to join, ISIS by
25 pledging allegiance to the group's leader, and that he

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1 provided, and attempted to provide, material support to the
2 group by disseminating (a) graphics promoting violent terrorist
3 attacks on ISIS's behalf in New York City and other locations;
4 (b) numerous manuals and other instructional materials
5 detailing how to make bombs and other weapons, and how to plan
6 and execute and arrange different terrorist attacks; (c) other
7 propaganda encouraging others to join ISIS and commit violent
8 attacks on behalf of a terrorist organization.

9 I will stop there, your Honor.

10 THE COURT: Thank you.

11 So let's just return to the scheduling dates.

12 Mr. Marvinny, if we were counting out six months, I
13 think we would be in February.

14 MR. MARVINNY: That's right, your Honor. I think
15 that's right.

16 THE COURT: My law calendar stops at January. So
17 that's what I am working from here at home.

18 MR. MARVINNY: Your Honor, may I just say, I am happy
19 to set an earlier sentencing date. I certainly don't want to
20 prejudice my client. I was just trying to be realistic and
21 avoid the need to seek adjournments.

22 THE COURT: Let me say this. First of all, I may not
23 have understood what you said. Did you want a sentencing date
24 six months out or did you want six months to make your
25 submission? I may have been confused on that.

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1 MR. MARVINNY: Well, your Honor, I think both, in that
2 normally I would file my submission two weeks before
3 sentencing.

4 THE COURT: Given what you're talking about, in other
5 words, if you're taking six months to create a tome for the
6 sentence, you might want to give me a little more time, because
7 I assume that the government is likewise going to make a
8 substantial submission. I gather that from what I just heard.

9 Let me say this. On one level I would regard all
10 dates going forward as theoretical, or certainly subject to
11 change, because I don't know that any of us have the capacity
12 to accurately predict, in a sense, the state of the world many
13 months from now. So I am happy to set a date. I am also aware
14 that, unlike other times when I kind of tend to regard them as
15 cast in stone, although, frankly, counsel may not regard them
16 quite as cast in stone as I do, I am very willing to be
17 flexible.

18 So I am truly just asking for your guidance. You tell
19 me what is realistic. As I said, if pretrial produces its
20 report on the standard schedule, that will be November 2nd.
21 That may be somewhat delayed these days, but I have not been
22 told that I can't use the standard schedule as the baseline.
23 Beyond that, I really am totally receptive to any suggestions
24 from counsel.

25 MR. MARVINNY: Understood, your Honor. I think, given

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1 what the Court said, it might make sense to set a sentencing
2 date about six months or so from now, and I will make an effort
3 to get the Court my submission, whether it qualifies as a tome
4 or not, sufficiently in advance of that date so the Court has
5 time and the government has time to review it. So I would get
6 it in more than two weeks in advance; and if I need more time,
7 I suppose I can come back. But I think with a sentencing date
8 six months from now, I would hopefully be able to file my
9 submission well in advance of that date such that the Court
10 will have a chance to review it.

11 MR. HELLMAN: Just to be clear, the government heading
12 into these proceedings understood it wouldn't be that lengthy a
13 request, as everyone hopes that by the time sentencing arrives
14 we are in a different landscape where in-person proceedings
15 have returned. Certainly, given the high demand and limited
16 availability of a video teleconference for MCC inmates, the
17 parties agreed that proceeding today, even though sentencing in
18 our minds was somewhat in the future, was necessary because the
19 government's plea offer was time-sensitive, and, in part,
20 conditioned on preservation of government resources, I think
21 the parties agreed there would have been serious harm to the
22 interest of justice if the plea agreement was not available to
23 Mr. Clark by moving or not being able to enter the plea
24 remotely.

25 THE COURT: I certainly agree with that. I broadly

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1 feel that not moving a case along, when it's ready to move
2 along, has many aspects which affect the interest of justice in
3 a serious way.

4 So if we were just doing six months to the day, we
5 could maybe set the sentencing for February 9, which is a
6 Tuesday, at let's say 11:30, with the full understanding that
7 if for some reason we need to change it because of the
8 complexity of the submissions that is feasible, and I would
9 expect the defendant's submission, let's say, by January 8.

10 Shall we say the government's by January 27?

11 MR. HELLMAN: That's fine with the government.

12 MR. MARVINNY: Yes, your Honor. That is fine with the
13 defense.

14 THE COURT: So anything else we should be covering
15 today?

16 MR. HELLMAN: Your Honor, I think I just caught a
17 small portion of the plea agreement that, while the defendant
18 is here and under oath, it makes sense to address.

19 Just briefly, first, to be clear, that the defendant
20 had agreed not to appeal any term of supervised release less
21 than or equal to the statutory maximum.

22 Second, that the defendant agreed not to appeal a fine
23 of less than or equal to that which your Honor mentioned of
24 \$400,000, and that the government likewise will not appeal any
25 fine greater than or equal to \$40,000.

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1 Finally, the defendant waived, or is waiving via this
2 plea agreement, any right to withdraw the plea or attack the
3 conviction on appeal or collaterally on grounds that the
4 government failed to produce discovery information, Jencks Act
5 material --

6 THE COURT: I don't allocute on that, deliberately,
7 the last thing.

8 MR. HELLMAN: Understood, your Honor.

9 With respect to the first two I mentioned -- sorry,
10 your Honor.

11 THE COURT: You think that's in this plea agreement
12 someplace?

13 There is a general understanding that he won't appeal
14 a sentence within the stipulated guidelines range. I see the
15 fine. That's fine. If you think that's important, we can make
16 sure that Mr. Clark agrees that he won't appeal the fine or the
17 supervised release portion of the sentence so long as it is not
18 above the statutory maximum, which I doubt I would ever have
19 imposed.

20 THE DEFENDANT: I agree to all of that.

21 MR. HELLMAN: Thank you, your Honor.

22 So just to be clear, those three portions of the plea
23 agreement I just alluded are specified on page 5.

24 THE COURT: Yes.

25 MR. HELLMAN: Thank you, your Honor.

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1 THE COURT: Anything else?

2 MR. HELLMAN: Not from the United States. Thank you,
3 your Honor.

4 THE COURT: Mr. Marvinny, anything?

5 MR. MARVINNY: Nothing. Thank you, your Honor.

6 THE COURT: Very good. Take care everyone.

7 (Adjourned)

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